IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO NO. 11 OF 2006

Date of Decision: 3rd April, 2006.

Ram Kali and another — **Petitioners**

Versus

Pankaj Sharma and others — **Respondents**

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[1]?

For the petitioners: Mr.Ajay Sharma, Advocate, vice Mr.Sanjeev Bhushan, Advocate.

For the respondent: Mr.M.S.Chandel, Advocate General, with Mr. J.K.Verma, Dy. Advocate General, for respondent No.3.

V.K.Gupta, C.J. (Oral)

This is yet another case in a long series of a catena of cases where this Court, time and again is confronted with situations where persons donning the mantle of quasi-judicial or judicial authorities under various statutes, such as Criminal Procedure Code, the Payment of Wages Act, the Gratuity Act and Workmen's Compensation Act etc. etc., pass judgments and orders which are not wholly and truly in keeping with the specific provisions of the law with which they are dealing. In passing

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

these orders, these officers also betray their total ignorance about the common law principles as well as their disregard to the principles of natural justice. On a few occasions in the past this Court unfortunately had to adversely comment upon the very poor quality of judgments and orders passed by these Officers. It had been noticed in the past by this Court that sometimes these cases related to the violation of civil liberties and human rights of the citizens. Time and again, this Court found that either in matters arising out of Workmen's Compensation Act or in matters arising out of Criminal procedure Code, the Officers exercising jurisdictions vesting in them either did not have a proper comprehension of the principles of law applicable to the cases being dealt with by them or they disregarded specific legal provisions, in the process not bothering to apply these principles appropriately and correctly to the facts of the cases.

It is high time, therefore, that a mechanism is evolved by the State Government whereby these Officers are imparted appropriate training, befitting their stature and commensurate with their rank so that patent and latent errors and mistakes do not occur, leading the helpless victims avoidably to superior Courts for rectifying the errors and

mistakes. The present case is a glaring example of the aforesaid. The facts in brief first.

The petitioners Ram Kali and Dal Bahadur are the mother and father of deceased Sher Singh, who was an employee of respondent No.1 Pankaj Sharma. He at the relevant time was working as a Cleaner in truck No. HP-14-7129, which was owned at the relevant time by respondent No.1 Pankaj Sharma. On 1st January, 2005 this truck met with an accident at Panipat in the State of Haryana. As a result of this accident, all the persons including Sher Singh, travelling in this truck died. Sher Singh was the unmarried son of the petitioners-claimants.

On 18th January, 2005 the petitioners instituted a case for claiming compensation in terms of the relevant provisions of Workmen's Compensation Act before respondent No.3. Vide an order passed on 30th June, 2005 respondent No.3 allowed this petition and passed an Award granting compensation in favour of both the petitioners to the tune of Rs.3,36,356/- alongwith interest at the rate of 6% per annum and held respondent No.2 Oriental Insurance Company liable to pay the compensation amount to the petitioners because the vehicle in question was admittedly insured with this Company. For a proper understanding of the issue involved in this case, it shall be advantageous to reproduce hereinbelow the

text of the Award dated 30th June, 2005 in its entirety. It reads thus:-

> "Present parties in person alongwith their counsels. The parties have mutually compromised the claim petition. The petitioner Smt. Ram Kali and Dal Bahadur mother and father of deceased Sher Singh have stated that they accept Rs.3,36,356/- as compensation under Workmen Compensation Act payable by the Oriental Insurance Company i.e. respondent No.2. The counsel for the Insurance Company stated that they are ready to deposit the compensation amount as claimed by the petitioner within 45 days from the date of this order.
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> I have perused the record. The amount claimed by the petitioner in his statement and offered by the Insurance Company is as per section 4 of the Workmen Compensation Act. Accordingly, I feel that the compromise would be in the interest of the petitioner. The compromise be recorded on and placed on file.
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> In view of the compromise, the petition is allowed as per compromise and respondent No.2 i.e. Oriental Insurance Company is ordered to deposit Rs.3,36,356/- as offered by him within 45 days from the date of this order failing which the Insurance Company shall further be liable to pay the interest @ 6% P.A. as agreed

> between the parties. The petition disposed off accordingly. Case file of this court be consigned to G.R.R. after due completion."

Apparently after the Insurer had deposited the award amount before the Commissioner, an application came to be filed by the petitioners for release of the award amount. The Commissioner, however, appears to have turned topsy-turvy in the meanwhile and by adopting a strange and an unusual course of action declined the prayer of petitioner No.2 Dal Bahadur for releasing in his favour the compensation amount, but in so far as the prayer of the first petitioner Ram Kali is concerned ordered that the entire amount of compensation be released in her favour but since she was a woman the amount after its release in her favour be kept in a fixed deposit. Since this order dated 24th September, 2005 (impugned in this petition) makes a very peculiar and strange reading it is advantageous to reproduce the same in verbatim, which reads thus:-

> "Present application for release of compensation amount Rs.3,36,356/- (Rupees three lac thirty six thousand three hundered(*sic)* fifty six) has been filed by the applicants which was awarded by this Court in case No.2/WC of 2005 and was deposited by the

Orential(*sic)* Insurance Company which was kept in S/A No.2202 of this Court. In the present claim petition, applicant No.1 is the mother of deceased Sher Singh s/o Sh.Dal Bahadur who covered under the definition of dependent as per provisions contained under section 2(iii)(a) of Workmen Compensation Act but the respondent No.2 who is father of the deceased does not fall in the definition (*sic*) of dependent, therefore, the amount of compensation Rs.3,36,356/- deposited is released only in favour of Applicant No.1 Smt. Ram Kali which be kept in F.D.R. for the terms of 6 years being "Women" (*sic*). However the interest occrued (*sic)* from these F.D.R's be released to applicant No.1 quarterly for maintining (*sic*) her livelihood and other necessities. Copy of this order is sent to the Manager U.C.O. Bank Solan for compliance with specific direction that copy of F.E.R.*(sic)* be sent to this Court for record and the original F.D.R. be given to applicant No.1 against proper receipt. Application be tagged with original copy file and the case file be consigned again in original.

Announced today the 24th Sept., 2005."

No appeal was filed against the award dated 30th June, 2005 by any one. This award had thus assumed finality in law.

Whether the petitioners were dependants of deceased Sher Singh and hence entitled to maintain the claim petition and, whether they were entitled to receive compensation on account of the loss suffered by them due to the death of Sher Singh arising out of, and in the course of his employment with Pankaj Sharma because of the aforesaid accident, were the questions which fell for determination, as they ought to have fallen for determination, only at the stage of adjudication of the claim petition which was taken cognizance of by respondent No.3. Whether by passing a detailed order or by passing a brief order, whether with or without the support of reasons (or insufficient reasons) respondent No.3 in the process of adjudication of the claim petition came to a definite conclusion that the petitioners were indeed the dependants of deceased Sher Singh and hence entitled to receive the compensation amount of Rs.3,36,356/-. Once he had done that, his job was over. Once he had decided the aforesaid issue, as far as that issue is concerned, he had become *functus officio*. Since in the course of the order dated 30th June, 2005 he had directed the Insurance

Company to deposit the amount within 45 days, consequent upon this deposit, ordering its disbursement to the claimants was only and practically a ministerial act which did not involve any judicial adjudication at the hands of the Commissioner, because the adjudication had already taken place culminating in the passing of the award dated 30th June, 2005. It was not, therefore, open to the Commissioner to have raked up the issue of either the dependency or for that matter the entitlement of petitioner No.2 as the legal heir of deceased Sher Singh.

The aforesaid discussion apart, in the course of the impugned order 24th September, 2005, the Commissioner appears to have rejected the prayer of petitioner No.2 for disbursal of his share of compensation amount on the ground that he was not a dependant of deceased Sher Singh because, according to the Commissioner the father in the present case could not be termed or held to be the dependant of his son. He erroneously made a reference to Section 2(iii)(a) of Workmen's Compensation Act (*sic*). First of all there is no sub-section (iii) of Section 2. Section 2 (1) has different clauses, starting from clause (a) (which of course was omitted in 1959 by an amendment in the Act) to

clause (n). Thereafter it has two main sub-sections being sub-sections (2) and (3).

The aforesaid notwithstanding, the expression 'dependant' has been defined in clause (d) of Section 2(1), which reads thus:-

"(d) 'dependant' means any of the following relatives of a deceased workman, namely –

(i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death-

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a parental grandparent if no parent of the workman is alive;

Explanation: For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively."

The deceased was an unmarried son of the petitioners. In terms of sub-clause (b) of clause (iii) of (d) of sub-section (1) of Section 2 of the Act, 'parents', undoubtedly are the 'dependants' of a deceased unmarried son (The expression 'a parent' used in sub-clause (b) (*supra*) undoubtedly includes the plural 'parents'). How did the Commissioner relate clause (a) to this case, which only talks of 'a widower', is not understood by this Court? Since a plain reading of aforesaid provision of law unmistakably stipulates that the parents of a deceased unmarried son are his dependants, the Commissioner made a patent error in holding to the contrary. Both the petitioners were jointly entitled to receive the compensation amount and the amount accordingly should have been disbursed to them.

In the course of the impugned order, the Commissioner by holding that petitioner No.1 was a

woman declined to disburse to her the amount in question and instead ordered that it be kept in fixed deposit. Mr. Chandel, learned Advocate General appearing for respondent No.3 has drawn my attention to sub-sections (6) and (7) of Section 8 of Workmen's Compensation Act, 1923, which read thus:-

> **"(6). Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto.**
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> **(7) Where any lumpsum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the workman."**

Yes, undoubtedly the aforesaid sub-sections (6) and (7) of Section 8 (*supra*), do suggest that if a claimant is a woman then it is the discretion of the Commissioner not to pay to her the amount directly but to order its investment, application or to deal with it otherwise for the benefit of the woman in such manner as the Commissioner may direct. The expression used in sub-sections (6) and (7) repeatedly is 'may'. The expression used is not 'shall'. Therefore, in a given situation, based on the facts and circumstances of each case, the Commissioner while dealing with the issue of disbursal of the money has to, on a proper application of mind and through process of reasoning, decide whether the money due to a woman should be paid to her directly or whether it should be invested or applied otherwise to the benefit of woman. Since the aforesaid stipulation in sub-sections (6) and (7) is not mandatory or binding, and it is only discretionary, it is not a matter of rule, in every case that whenever a woman is entitled to receive compensation and an award is made in her favour, in every case she must be denied the amount due to her and in every case the amount must be invested, or applied otherwise. This is undoubtedly not the intention of the Legislature

evidently from a bare reading of sub-sections (6) and (7) of Section 8 (*supra*).

After hearing the learned counsel for the parties in this case, I am satisfied that the first petitioner is in dire need of money and that she alongwith her husband not only needs the money but can manage the money properly. Therefore, in the facts and circumstances of this case, amount in question needs to be paid to the petitioners directly rather than it being kept in a fixed deposit since in my considered opinion payment of the amount in question to the petitioners would be for their benefit and would be more advantageous to them than it being retained in a fixed deposit.

For the foregoing reasons, this petition is allowed. The impugned order is quashed and set aside with the consequences that the amount deposited by respondent No.2 and lying with the Commissioner respondent No.3 shall be paid to the petitioners alongwith interest accrued thereupon uptil date.

(V.K.Gupta),
Chief Justice.

3rd April, 2006
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